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09/423,131	11/05/1999	HIROSHI KAWAKAMI	3815/90	6371

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EXAMINER

HOM, SHICK C

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 02/09/2004

20

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/423,131

Applicant(s)

KAWAKAMI ET AL.

Examiner

Shick C Hom

Art Unit

2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/17/03, 12/16/03, 1/5/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-5 and 8-23 is/are rejected.
- 7) ☒ Claim(s) 6 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 16.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 2666

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 2-23 have been considered but are moot in view of the new ground(s) of rejection.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required.

See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: in page 9 lines 6-16, applicant disclaimed the claim for priority under 35 U.S.C. 119(b); therefore the foreign application JAPAN 10-55088 must be deleted from the oath.

Specification

3. The disclosure is objected to because of the following informalities: in page 7 lines 10, 24, and page 8 line 8 which recite "claim 1" should be deleted because claim 1 have been deleted from the list of claims; further, examiner suggests deleting all reference to the claims because when the case is allowed, all the claims may be renumbered.

Art Unit: 2666

Appropriate correction is required.

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 2-5, 8-12, 17, and 20-21 are rejected under 35 U.S.C. 102^e(b) as being anticipated by Onyiaha (6,377,545).
Regarding claims 2, 9, 11, and 17:

Onyiaha discloses the radio base station (see the base station in the mobile radio telephone network in col. 2 lines 49-54) comprising a traffic control unit, the traffic control unit comprising: receiving means for receiving data; traffic control means for carrying out traffic control of the data received by said receiving means; and transmission means for

Art Unit: 2666

transmitting the data passing through the traffic control by said traffic control means, wherein said traffic control means carries out traffic control of data to be transmitted to a local switch through a transmission path between the radio base station and the local switch for transmitting data between the radio base station and the local switch, from among the data received by said receiving means, and said traffic control means carries out the traffic control by discarding data unconformable to the traffic condition, or regulating transmission of the data unconformable to the traffic condition to meet the traffic condition (see means for traffic control which includes discarding cells that are non-conforming in col. 2 lines 3-48 and col. 3 lines 34-55; see the LAN in col. 3 lines 16-23).

Regarding claims 3 and 20-21:

Onyiaha discloses wherein said data takes place in a burst mode at a period proper to the data, and wherein said traffic control means carries out, for the data received by said receiving means, the traffic control such that a cumulative transmission volume in a traffic monitoring period defined by taking account of the proper period does not exceed a volume based on a traffic rate (see traffic control means takes into consideration expected arrival rate of cells in col. 3 lines 34-55).

Art Unit: 2666

Regarding claim 12:

Onyiagha discloses wherein said traffic control means carries out traffic control of data to be transmitted to a local switch through a transmission path between the LAN and the local switch for transmitting data between the LAN and the local switch, from among the data received by said receiving means (see traffic control of data in col. 2 lines 3-48 and output to the network and switch in col. 3 lines 34-55).

Regarding claims 4 and 10:

Onyiagha discloses the traffic control unit for carrying out traffic control of data taking place in a burst mode at a period proper to the data, said traffic control unit comprising: receiving means for receiving the data; traffic control means for carrying out the traffic control for the data received by said receiving means such that a cumulative transmission volume in a traffic monitoring period defined by taking account of said proper period does not exceed an allowed transmission volume based on a traffic rate; and transmission means for transmitting the data controlled by said traffic control means (see means for traffic control which includes discarding cells that are non-conforming in col. 2 lines 3-48, col. 3 lines 34-55, and traffic control means further takes into consideration expected arrival rate of cells in col. 3 lines 34-55).

Art Unit: 2666

Regarding claim 5:

Onyiagha discloses wherein said traffic control means carries out, for the data received by said receiving means, peak traffic control such that a cumulative transmission volume in a peak traffic monitoring period defined by taking the account of the proper period does not exceed an allowed transmission volume based on a peak traffic rate, and sustainable traffic control such that a cumulative transmission volume in a sustainable traffic monitoring period defined by taking the account of the proper period does not exceed an allowed transmission volume based on a sustainable traffic rate (see the use of peak and mean bit rates for traffic control in col. 2 lines 3-48).

Regarding claim 8:

Onyiagha discloses wherein said data consists of ATM cells generated from a radio frame (see col. 5 lines 52-67 and col. 6 lines 35-40), and said proper period equals a radio frame period (col. 6 lines 18-27).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2666

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 13-16, 18-19, and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Onyiagha (6,377,545) in view of Klausmeier et al. (5,570,360).

Regarding claims 13, 15, 18, 19:

Onyiagha discloses the traffic control unit, the traffic control unit comprising: receiving means for receiving data; traffic control means for carrying out traffic control of the data received by said receiving means; and transmission means

Art Unit: 2666

for transmitting the data passing through the traffic control by said traffic control means, wherein said traffic control means carries out traffic control by discarding data unconformable to the traffic condition, or regulating transmission of the data unconformable to the traffic condition to meet the traffic condition (see means for traffic control which includes discarding cells that are non-conforming in col. 2 lines 3-48 and col. 3 lines 34-55).

For claims 13, 15, 18, and 19, Onyiagha discloses all the subject matter of the claimed invention with the exception of the PBX as in claims 13 and 18 and the gateway as in claims 15 and 19.

Klausmeier et al. from the same or similar fields of endeavor teach that it is known to provide the PBX and gateway (see col. 3 lines 45-50, where the packer router corresponds to the gateway), respectively. Thus, it would have been obvious to the person having ordinary skill in the art at the time the invention was made to provide PBX and gateway including the traffic control unit as taught by Klausmeier et al. to provide communication equipment in which the traffic control unit Onyiagha can reside and function as designed.

Regarding claim 14:

Art Unit: 2666

Onyiagha discloses wherein said traffic control means carries out traffic control of data to be transmitted to a local switch through a transmission path between the PBX and the local switch for transmitting data between the PBX and the local switch, from among the data received by said receiving means (see traffic control of data in col. 2 lines 3-48 and output to the network and switch in col. 3 lines 34-55).

Regarding claim 16:

Onyiagha discloses wherein said traffic control means carries out traffic control of data to be transmitted to a local switch through a transmission path between the gateway switch and the local switch for transmitting data between the gateway switch and the local switch, from among the data received by said receiving means (see traffic control of data in col. 2 lines 3-48 and output to the network and switch in col. 3 lines 34-55).

Regarding claims 22 and 23:

Onyiagha discloses wherein said traffic condition is a condition that an amount of data transmitted by a user does not exceed a predetermined amount (see traffic control means takes into consideration expected arrival rate of cells in col. 3 lines 34-55).

Art Unit: 2666

Allowable Subject Matter

10. Claims 6 and 7 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

VanDervort discloses measuring burst rate and burst size in ATM network virtual connections.

Bonomi et al. disclose dynamic access control for an ATM network.

Navaro et al. disclose a wireless communications system.

12. Any response to this nonfinal action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for Technology Center 2600 only)

Art Unit: 2666

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (2600 Receptionist at (703) 305-4750).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shick Hom whose telephone number is (703) 305-4742. The examiner's regular work schedule is Monday to Friday from 8:00 am to 5:30 pm EST and out of office on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao, can be reached at (703) 308-5463.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

SH

February 2, 2004


